

motion for default judgment on January 22, 2008; and Defendant Frazier having failed to respond to the instant Motion and the time for such response having elapsed; and

it appearing that Plaintiff is seeking damages against Defendant Frazier as a personal guarantor for obligations incurred by corporate Defendant Mantiff, see Compl. ¶¶ 33-36, Ex. 3 (personal guarantee); and

it appearing, therefore, that Defendant Frazier's liability as a guarantor arises solely from the liability of corporate Defendant Mantiff; and

it appearing that, upon consideration of the parties papers in Defendants' Motion to Lift Default, the Court will set aside the clerk's default against corporate Defendant Mantiff and individual Defendant Alario and permit Defendants Mantiff and Alario to file an answer out of time; and

it appearing, therefore, that Plaintiff is unable at this time to establish corporate Defendant Mantiff's primary liability, and that Plaintiff is therefore also unable to establish Defendant Frazier's derivative liability as a guarantor.

ACCORDINGLY IT IS on this 4th day of March, 2008

ORDERED that Defendant Charles Alario and Mantiff Dover Restaurant Group, LLC's Motion to Set Aside Default (DKT#11) is **GRANTED**; and it is further

ORDERED that the Clerk of the Court shall lift the default against Defendants Mantiff and Alario; and it is further

ORDERED that Defendants Mantiff and Alario may file an answer to Plaintiff's complaint by **March 11, 2008**; and it is further

ORDERED that Plaintiff's Motion for Default Judgment (DKT#15) against Defendant Frazier is **DENIED** without prejudice to Plaintiff's right to renew the motion if Defendant Mantiff's primary liability is established.

/s/ Faith S. Hochberg

Hon. Faith S. Hochberg, U.S.D.J.